law of Louisiana. See *Dixie Drive-It-Yourself System vs American Beverage Co.*, supra. In *Pierre*, the Supreme Court after finding a violation of a prohibitive statute thereafter made the factual determination (Louisiana Appellate Review includes a review upon the law and the facts, Article VII, Section 10, Louisiana Constitution of 1921) on Page 828 as follows:

> "We have determined as a matter of fact that the unattended Chrysler automobile was parked on the paved portion of the highway in such a manner as to obstruct the passage of two-way traffic on the highway, along which the pick-up truck carrying plaintiffs' father had been preceding south approximately forty feet in front of the Mack dumptruck operated by Miller. We have also found as a matter of fact that the pick-up truck had to stop because of the obstructing parked Chrysler, and that the inattentive Miller, failing to keep a proper lookout, struck the stopped pick-up truck from the rear, propelling it into the parked Chrysler and finally injuring plaintiff's father. It must naturally follow that the Chrysler's obstructing of the highway was a contributing cause-in-fact of the accident."

There is therefore no variance between the most recent pronouncement of the Louisiana Supreme Court and the opinion of the Fifth Circuit in this case as to the application of Louisiana law. Violation of a statutory duty amounting to negligence still requires a factual determination of proximate cause. *Beraud vs. Allstate Insurance Company*, La. App. 1971, 251 So. 2d 402, 404:

> "Therefore, for the violation of a highway safety statute to result in a finding that the violation

was actionable negligence or actionable contributory negligence, the conduct complained of must be a cause-in-fact of the accident and the purpose of the statute must prescribe the conduct causing the accident and injury. Dixie Drive-It-Yourself System New Orleans Co. vs American Beverage, cited supra."

The verdict of the jury based upon the law given and the decision of the intermediate appellate court are in consonance with Louisiana law, accordingly, the petition should be denied.

Respectfully submitted,

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